

**Q&A FROM AUGUST 15 PUBLIC MEETING
(VARIOUS ORDINANCE TOPICS)**

Buffers

Q. How does this buffer requirement affect homeowners with regard to what can be done to property and if they want to sell property?

A. This rule does not affect existing property unless it is being developed or redeveloped. A homeowner can redevelop or expand property up to 50% of the value of the home (substantial improvement). The buffer rule is not applied when selling.

Q. Why is the City exceeding state requirements?

A. The State model ordinance is designed to address all communities across North Carolina and provides minimum requirements as a guide. The State looks to the cities to expand upon issues that are prevalent and are concerns for each city. Based on the studies that were done for the City of Asheville, the technical recommendation is a 50 foot buffer.

Q. What is meant by hardship and exceptions?

A. The State statute identifies hardships and exceptions specifically for buffer rules. The hardship defined by the State is the same as the definition in the current City Ordinance and is set forth to grant a variance. An exception must be granted for the buffer rule if it is shown that there are no practical alternatives (defined in the draft ordinance), or if the rule would result in a taking of property (defined in the draft ordinance).

Q. Won't the new Ordinance limit greenways?

A. Yes, greenways would be prohibited in the more restrictive first 30 feet from the regulated surface water; this is per the State requirements. It is proposed that greenways be allowed in the less restrictive outer 20 feet of the buffer area.

Q. How can the City go beyond what the State is recommending?

A. State law allows the City to exceed the 30 foot buffer; it gives the City the authority to enhance or expand on the minimum requirements.

Q. Under the exemptions, could you clarify it to add golf courses?

A. Golf courses would not be exempt.

Q. Would the City use the same stream definition as the State?

A. Yes.

Q. Did the City consider the impact the buffer would have on the River Redevelopment Area?

A. Staff recommended a minimum 50 foot buffer. This limit is based on technical research showing that this is the minimum buffer recommended to clean and filter water before passing it along. Less cleaning decreases water quality. Right now our water quality is pretty good and the City wants to keep it that way for years to come.

Q. I'm a bit confused with the existing and proposed slopes on buffers. Will it be 50 feet if a parcel is level and increase if the parcel is steep?

A. The minimum buffer width for regulated streams would be 50 feet. If the slope of the adjacent land is greater than 30% the buffer width would increase 1 foot for

each percent the slope increases beyond 30. The described increase in buffer width based on slope would occur because the buffer requirements as found in the North Carolina Sediment Pollution Control Act would be more restrictive than the City minimum, and therefore must be applied when determining the buffer width.

Q. Is there going to be a map amendment required showing the buffer requirements as with floodplain maps?

A. No.

Q. The Stakeholders Committee did not all agree on the buffer recommendations. Could you tell us who voted for which recommendation?

A. Concerning this vote, the some representatives of the development group voted for 30 foot buffers, some of the neighborhood group wanted 100 foot, and others were in the middle (50 foot). Basically about a third of the committee voted for each buffer selection.

Q. Why are property owners not going to be compensated?

A. Property owners are not being compensated because property is not going to be taken. There are provisions in the ordinance that will give the property owners the right to file for an exemption or hardship case so they can use their property. Per the State Ordinance the City SHALL grant these exceptions. It is not a "may." In addition, several studies have documented the increase of property values in areas adjacent to buffers (www.stormwatercenter.net/).

Q. Why is Council not considering a 40 foot buffer instead?

A. This has not been proposed to the Council, but they may determine that given all the factors to be considered 40 feet is the minimum width for buffers.

Q. Under the UDO, the buffer width is measured from the edge of the water, but the State measures it as "landward." How did the City come up with the "top of bank"?

A. This is the most practical method of determining where to begin the buffer width. It is more difficult to determine edge of water as it changes day to day, or ordinary high water mark. The vast majority of provisions regarding buffers indicate measurement from top of bank.

Q. If I have a stream on a property and am about to sell, do I need to legally tell a buyer about the 50 foot buffer?

A. This was answered by a realtor in the audience. At this time, the property owner could elect not to tell, but the realtor is required to.

Inspections and Enforcement

Q. Why not have City employees do the required site inspections instead of outsourcing? Why not have it as an option instead of a requirement?

A. The goal of the City is to bring the designers into the construction phase to inspect and improve the design. If a City employee does the inspection and redesigns the plan, then the City takes liability for possible failure. Also, implementation in this manner would cause staffing issues because of the high variability in demand.

Q. Why does the City not support the state regulations and enforce them?

A. We do support and enforce the state regulations.

Q. Concerning fines: Sometimes the plans that the designer makes do not work in the field and changes have to be made. Would we be penalized for this?

A. One of the goals of this ordinance is to get the plan designer to interact more with the projects in the field. If field changes and adjustments to measures were made that added protection, a penalty would not be applied. If needed measures were not installed, a penalty would be assessed. Currently if changes are made an amended plan must be filed and this will continue.

Q. Concerning offsite runoff: Will the city have the same regulations as DENR – an exemption exists for greater than the 10 year storm event, and developers would have time to clean or fix the damages before fines are levied?

A. An immediate fine may be imposed if the event exceeds the 10 year storm. It is the development team's responsibility to keep all sediment on site even if a storm exceeds the 10 year event. The severity of a storm causing the off-sedimentation will be considered when assessing the fine, along with history of the project (were there other violations at the time, i.e. failure to install or maintain, etc.).

Other Topics

Q. Will flooding that is caused by existing developments (completed for a year or more) be addressed or fixed by this Ordinance?

A. No, this ordinance will only apply to new development and redevelopment.

Q. Concerning the watershed study on the Upper Ross Creek; was this duplicated elsewhere and if not, are there plans to?

A. We are currently doing master plan studies on Upper Ross Creek and Dingle Creek. We plan to continue this effort and do additional master plan studies each year.

Q. Could you please define "built-upon area"?

A. Built-upon area means that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel area such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, or the water area of a swimming pool.

Q. Why is the City not encouraging low-density development?

A. Under the state regulations low-density development (24% or lower impervious surface) has different standards. The buffer does apply to both Low and High Density, but the development does not have to achieve the capturing of the first inch of rain and the removal of the sediments and contaminants from it. However, Low Density encourages sprawl and the stakeholder group recommended against this option.

Q. Concerning Fill (Slopes) – What does it mean if slopes are not in accordance with the plans?

A. This pertains to slopes that are significantly different from the approved plan or which are not stabilized within the required time frames. We understand adjustments need to be made in the field, and this is another reason the City wants

a qualified professional to be more involved with the project during construction. This helps make sure changes that need to be made in the field are addressed properly.

Q. Is it true that if a development is 50 units or less it isn't impacted by the City as much as larger developments?

A. Not as it relates to this ordinance. The 50 unit or fewer developments are in a different category and therefore require a different level of plan review. However, they must adhere to the same requirement of this Ordinance. This Stormwater and Erosion Control Ordinance applies to land disturbing activity not to a specific number of units.

Q. Can current plans move forward?

A. Yes, plans that have been submitted prior to the effective date of the revised ordinance will be regulated by the existing Post-Construction Stormwater and Erosion Control requirements.

Q. Is there any way to help realtors differentiate between the State Ordinance, the existing ordinance and the proposed Ordinance?

A. A document has been placed on the Stormwater and Erosion Control Information page on the City Web site, which highlights the proposed changes to the ordinance. A chart is also included in the staff report for the August 21 Council meeting (also available online). In addition, staff will conduct training and information sessions after the adoption of the ordinance.

Q. To improve water quality, why not have Kenilworth Lake and Beaver Lake dredged?

A. These are private lakes. The sedimentation in these lakes is caused by private developments, not by the City of Asheville.

Q. Concerning the City stormwater system capacity, how much can it handle? How much does it handle? What is the difference and why?

A. Staff cannot answer this question at this time. The existing system capacity and demand varies from pipe to pipe. The City is conducting watershed master planning which will provide answers to these questions. These answers will allow the City to understand where to concentrate efforts to upgrade the system and to restrict flows from development.

Q. The draft ordinance is very hard to follow; did you just take the State model and modify or add to it?

A. No, the existing ordinances, state model ordinances and other communities' ordinances were used as guides. We believe the upcoming training sessions will help those affected by the ordinance to better understand it.

Q. Does the revised ordinance need to go back to Planning and Zoning to be reviewed and approved this version?

A. No. The revisions made since the time that Planning and Zoning approved the draft were not material in nature.

Q. Wasn't the deadline for this Ordinance July 1? Why wasn't it passed by City Council back then?

A. July 1 was the deadline for the Ordinance. However, City Council requested more time to look at proposals and to obtain feedback from the public, which is why the public meetings were scheduled. Staff has met with every Council member

individually to go over the proposed Ordinance. It is clear to Council that this is a sensitive subject and that people might have concerns over where they can build, especially since the Steep Slope Ordinance has just been passed. The recommendation of a 50 foot buffer is a technical decision, not a political one. Council is intended to make these political and policy decisions. If they choose to go in a different direction on the buffer, staff will support that decision.

Q. Stormwater and Erosion Control are two separate things, why not keep them that way?

A. The current ordinances are separated in the Unified Development Ordinances; however, the two subjects are closely related with the common denominator being runoff from storms. Erosion Control regulations address the runoff during construction activity and Stormwater regulations address the runoff in the post-construction stage. Because of the close relation of these topics, Staff has combined these topics in the proposed ordinance to reduce some redundancy and provide for a cohesive, holistic set of provisions.